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LOCKHEED MARTIN CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BAHMAN M. GHANI,

Plaintiff,

vs.

LOCKHEED MARTIN CORPORATION;
DOES 1 through 20, inclusive,

Defendants.

) Case No. C08-02120 JF

) Case Filed: March 13, 2008

) **STIPULATED PROTECTIVE ORDER**

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation would be
5 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
6 following Stipulated Protective Order. The parties acknowledge that this Order does not confer
7 blanket protections on all disclosures or responses to discovery and that the protection it
8 affords extends only to the limited information or items that are entitled under the applicable
9 legal principles to treatment as confidential. The parties further acknowledge, as set forth in
10 Section 10, below, that this Stipulated Protective Order creates no entitlement to file
11 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must
12 be followed and reflects the standards that will be applied when a party seeks permission from
13 the court to file material under seal.
14

15 2. DEFINITIONS

16 2.1 Party: any party to this action, including all of its officers, directors,
17 employees, consultants, retained experts, and outside counsel (and their support staff).
18

19 2.2 Disclosure or Discovery Material: all items or information, regardless of
20 the medium or manner generated, stored, or maintained (including, among other things,
21 testimony, transcripts, or tangible things) that are produced or generated in disclosures or
22 responses to discovery in this matter.
23

24 2.3 "Confidential" Information or Items: information (regardless of how
25 generated, stored or maintained) or tangible things that qualify for protection under standards
26 developed under F.R.Civ.P. 26(c).

 2.4 "Highly Confidential – Attorneys' Eyes Only" Information or Items:

1 extremely sensitive “Confidential Information or Items” whose disclosure to another Party or
2 nonparty would create a substantial risk of serious injury that could not be avoided by less
3 restrictive means.

4 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material
5 from a Producing Party.

6 2.6 Producing Party: a Party or non-party that produces Disclosure or
7 Discovery Material in this action.

8 2.7 Designating Party: a Party or non-party that designates information or
9 items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly
10 Confidential— Attorneys’ Eyes Only.”

11 2.8 Protected Material: any Disclosure or Discovery Material that is
12 designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

13 2.9. Outside Counsel: attorneys who are not employees of a Party but who
14 are retained to represent or advise a Party in this action.

15 2.10 House Counsel: attorneys who are employees of a Party.

16 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as
17 well as their support staffs).

18 2.12 Expert: a person with specialized knowledge or experience in a matter
19 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
20 witness or as a consultant in this action and who is not a past or a current employee of a Party
21 or of a competitor of a Party’s and who, at the time of retention, is not anticipated to become
22 an employee of a Party or a competitor of a Party’s. This definition includes a professional jury
23 or trial consultant retained in connection with this litigation.

24 2.13 Professional Vendors: persons or entities that provide litigation support

1 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
2 and organizing, storing, retrieving data in any form or medium; etc.) and their employees and
3 subcontractors.

4 3. SCOPE

5 The protections conferred by this Stipulation and Order cover not only Protected
6 Material (as defined above), but also any information copied or extracted therefrom, as well as
7 all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or
8 presentations by parties or counsel to or in court or in other settings that might reveal Protected
9 Material.
10

11 4. DURATION

12 Even after the termination of this litigation, the confidentiality obligations imposed by
13 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
14 order otherwise directs.
15

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
18 Party or non-party that designates information or items for protection under this Order must
19 take care to limit any such designation to specific material that qualifies under the appropriate
20 standards. A Designating Party must take care to designate for protection only those parts of
21 material, documents, items, or oral or written communications that qualify – so that other
22 portions of the material, documents, items, or communications for which protection is not
23 warranted are not swept unjustifiably within the ambit of this Order.
24

25 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
26 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to

unnecessarily encumber or retard the case development process, or to impose unnecessary expenses and burdens on other parties), expose the Designating Party to sanctions.

If it comes to a Party's or a non-party's attention that information or items that it designated for protection do not qualify for protection at all, or do not qualify for the level of protection initially asserted, that Party or non-party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (apart from transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top of each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY").

A Party or non-party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified

1 the documents it wants copied and produced, the Producing Party must determine which
2 documents, or portions thereof, qualify for protection under this Order, then, before producing
3 the specified documents, the Producing Party must affix the appropriate legend
4 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the
5 top of each page that contains Protected Material. If only a portion or portions of the material
6 on a page qualifies for protection, the Producing Party also must clearly identify the protected
7 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
8 portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).
10

11 (b) for testimony given in deposition or in other pretrial or trial proceedings,
12 that the Party or non-party offering or sponsoring the testimony identify on the record, before
13 the close of the deposition, hearing, or other proceeding, all protected testimony, and further
14 specify any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL –
15 ATTORNEYS’ EYES ONLY.” When it is impractical to identify separately each portion of
16 testimony that is entitled to protection, and when it appears that substantial portions of the
17 testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the
18 testimony may invoke on the record (before the deposition or proceeding is concluded) a right
19 to have up to 20 days to identify the specific portions of the testimony as to which protection is
20 sought and to specify the level of protection being asserted (“CONFIDENTIAL” or “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that
22 are appropriately designated for protection within the 20 days shall be covered by the
23 provisions of this Stipulated Protective Order.
24
25

26 Transcript pages containing Protected Material must be separately bound by the court
reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or

1 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or
 2 nonparty offering or sponsoring the witness or presenting the testimony.

3 (c) for information produced in some form other than documentary, and for any
 4 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
 5 container or containers in which the information or item is stored the legend
 6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only
 7 portions of the information or item warrant protection, the Producing Party, to the extent
 8 practicable, shall identify the protected portions, specifying whether they qualify as
 9 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”
 10

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
 12 to designate qualified information or items as “Confidential” or “Highly Confidential –
 13 Attorneys’ Eyes Only” does not, standing alone, waive the Designating Party’s right to secure
 14 protection under this Order for such material. If material is appropriately designated as
 15 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” after the material was initially
 16 produced, the Receiving Party, on timely notification of the designation, must make reasonable
 17 efforts to assure that the material is treated in accordance with the provisions of this Order.
 18

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
 21 confidentiality designation is necessary to avoid foreseeable substantial unfairness,
 22 unnecessary economic burdens, or a later significant disruption or delay of the litigation, a
 23 Party does not waive its right to challenge a confidentiality designation by electing not to
 24 mount a challenge promptly after the original designation is disclosed.
 25

26 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating

1 Party's confidentiality designation must do so in good faith and must begin the process by
2 conferring directly (in voice to voice dialogue; other forms of communication are not
3 sufficient) with counsel for the Designating Party. In conferring, the challenging Party must
4 explain the basis for its belief that the confidentiality designation was not proper and must give
5 the Designating Party an opportunity to review the designated material, to reconsider the
6 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
7 designation. A challenging Party may proceed to the next stage of the challenge process only if
8 it has engaged in this meet and confer process first.

10 6.3 Judicial Intervention. A Party that elects to press a challenge to a
11 confidentiality designation after considering the justification offered by the Designating Party
12 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local
13 Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis
14 for the challenge. Each such motion must be accompanied by a competent declaration that
15 affirms that the movant has complied with the meet and confer requirements imposed in the
16 preceding paragraph and that sets forth with specificity the justification for the confidentiality
17 designation that was given by the Designating Party in the meet and confer dialogue.

19 The burden of persuasion in any such challenge proceeding shall be on the
20 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the
21 material in question the level of protection to which it is entitled under the Producing Party's
22 designation.

24 7. ACCESS TO AND USE OF PROTECTED MATERIAL

25 7.1 Basic Principles. A Receiving Party may use Protected Material that is
26 disclosed or produced by another Party or by a non-party in connection with this case only for
prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be

1 disclosed only to the categories of persons and under the conditions described in this Order.
2 When the litigation has been terminated, a Receiving Party must comply with the provisions of
3 section 11, below (FINAL DISPOSITION).

4 Protected Material must be stored and maintained by a Receiving Party at a
5 location and in a secure manner that ensures that access is limited to the persons authorized
6 under this Order.

7
8 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
9 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
10 disclose any information or item designated CONFIDENTIAL only to:

11 (a) the Receiving Party's Outside Counsel of record in this action, as
12 well as employees of said Counsel to whom it is reasonably necessary to disclose the
13 information for this litigation and who have signed the "Agreement to Be Bound by Protective
14 Order" that is attached hereto as Exhibit A;

15
16 (b) the officers, directors, and employees (including House Counsel) of
17 the Receiving Party to whom disclosure is reasonably necessary for this litigation and who
18 have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

19 (c) experts (as defined in this Order) of the Receiving Party to whom
20 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to
21 Be Bound by Protective Order" (Exhibit A);

22 (d) the Court and its personnel;

23 (e) Mediators assigned to this case per Stipulation and Court Order and
24 their personnel;
25
26

1 (f) court reporters, their staffs, and professional vendors to whom
2 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to
3 Be Bound by Protective Order" (Exhibit A);

4 (g) during their depositions, witnesses in the action to whom disclosure
5 is reasonably necessary and who have signed the "Agreement to Be Bound by Protective
6 Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that
7 reveal Protected Material must be separately bound by the court reporter and may not be
8 disclosed to anyone except as permitted under this Stipulated Protective Order.
9

10 (h) the author of the document or the original source of the information.

11 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
12 ONLY" Information or Items. Unless otherwise ordered by the court or permitted in writing
13 by the Designating Party, a Receiving Party may disclose any information or item designated
14 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

15 (a) the Receiving Party's Outside Counsel of record in this action, as
16 well as employees of said Counsel to whom it is reasonably necessary to disclose the
17 information for this litigation and who have signed the "Agreement to Be Bound by Protective
18 Order" that is attached hereto as Exhibit A;
19

20 (b) House Counsel of a Receiving Party to whom disclosure is
21 reasonably necessary for this litigation, and who has signed the "Agreement to Be Bound by
22 Protective Order" (Exhibit A);
23

24 (c) Experts (as defined in this Order) (1) to whom disclosure is
25 reasonably necessary for this litigation, (2) who have signed the "Agreement to Be Bound by
26 Protective Order" (Exhibit A), [*Optional*: and (3) as to whom the procedures set forth in
paragraph 7.4, below, have been followed];

1 (d) the Court and its personnel;

2 (e) Mediators assigned to this case per Stipulation and Court Order and
3 their personnel;

4 (f) court reporters, their staffs, and professional vendors to whom
5 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to
6 Be Bound by Protective Order" (Exhibit A); and

7 (g) the author of the document or the original source of the information.

8
9 7.4 Procedures for Approving Disclosure of "HIGHLY CONFIDENTIAL –
10 ATTORNEYS' EYES ONLY" Information or Items to "Experts"

11 (a) Unless otherwise ordered by the court or agreed in writing by the
12 Designating Party, a Party that seeks to disclose to an "Expert" (as defined in this Order) any
13 information or item that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS'
14 EYES ONLY" first must make a written request to the Designating Party that (1) identifies the
15 specific HIGHLY CONFIDENTIAL information that the Receiving Party seeks permission to
16 disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or
17 her primary residence, (3) attaches a copy of the Expert's current resume, (4) identifies the
18 Expert's current employer(s), (5) identifies each person or entity from whom the Expert has
19 received compensation for work in his or her areas of expertise or to whom the expert has
20 provided professional services at any time during the preceding five years, and (6) identifies
21 (by name and number of the case, filing date, and location of court) any litigation in
22 connection with which the Expert has provided any professional services during the preceding
23 five years.

24 (b) A Party that makes a request and provides the information specified
25 in the preceding paragraph may disclose the subject Protected Material to the identified Expert

1 unless, within seven court days of delivering the request, the Party receives a written objection
2 from the Designating Party. Any such objection must set forth in detail the grounds on which it
3 is based.

4 (c) A Party that receives a timely written objection must meet and confer
5 with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter
6 by agreement. If no agreement is reached, the Party seeking to make the disclosure to the
7 Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil
8 Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion
9 must describe the circumstances with specificity, set forth in detail the reasons for which the
10 disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure
11 would entail and suggest any additional means that might be used to reduce that risk. In
12 addition, any such motion must be accompanied by a competent declaration in which the
13 movant describes the parties' efforts to resolve the matter by agreement (i.e., the extent and the
14 content of the meet and confer discussions) and sets forth the reasons advanced by the
15 Designating Party for its refusal to approve the disclosure.
16

17
18 In any such proceeding the Party opposing disclosure to the Expert shall bear
19 the burden of proving that the risk of harm that the disclosure would entail (under the
20 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material
21 to its Expert.
22

23 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
24 OTHER LITIGATION.

25 If a Receiving Party is served with a subpoena or an order issued in other
26 litigation that would compel disclosure of any information or items designated in this action as
"CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the

1 Receiving Party must so notify the Designating Party, in writing (by fax, if possible)
2 immediately and in no event more than three court days after receiving the subpoena or order.
3 Such notification must include a copy of the subpoena or court order.

4 The Receiving Party also must immediately inform in writing the Party who
5 caused the subpoena or order to issue in the other litigation that some or all the material
6 covered by the subpoena or order is the subject of this Protective Order. In addition, the
7 Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party
8 in the other action that caused the subpoena or order to issue.
9

10 The purpose of imposing these duties is to alert the interested parties to the
11 existence of this Protective Order and to afford the Designating Party in this case an
12 opportunity to try to protect its confidentiality interests in the court from which the subpoena
13 or order issued. The Designating Party shall bear the burdens and the expenses of seeking
14 protection in that court of its confidential material – and nothing in these provisions should be
15 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful
16 directive from another court.
17

18 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

19 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
20 Material to any person or in any circumstance not authorized under this Stipulated Protective
21 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
22 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,
23 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms
24 of this Order, and (d) request such person or persons to execute the “Acknowledgment and
25 Agreement to Be Bound” that is attached hereto as Exhibit A.
26

1 10. FILING PROTECTED MATERIAL. Without written permission from the
2 Designating Party or a court order secured after appropriate notice to all interested persons, a
3 Party may not file in the public record in this action any Protected Material. A Party that seeks
4 to file under seal any Protected Material must comply with Civil Local Rule 79-5.

5 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the
6 Producing Party, within sixty days after the final termination of this action, each Receiving
7 Party must return all Protected Material to the Producing Party. As used in this subdivision,
8 "all Protected Material" includes all copies, abstracts, compilations, summaries or any other
9 form of reproducing or capturing any of the Protected Material. With permission in writing
10 from the Designating Party, the Receiving Party may destroy some or all of the Protected
11 Material instead of returning it. Whether the Protected Material is returned or destroyed, the
12 Receiving Party must submit a written certification to the Producing Party (and, if not the same
13 person or entity, to the Designating Party) by the sixty day deadline that identifies (by
14 category, where appropriate) all the Protected Material that was returned or destroyed and that
15 affirms that the Receiving Party has not retained any copies, abstracts, compilations,
16 summaries or other forms of reproducing or capturing any of the Protected Material.
17 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,
18 motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if
19 such materials contain Protected Material. Any such archival copies that contain or constitute
20 Protected Material remain subject to this Protective Order as set forth in Section 4
21 (DURATION), above.

22 12. MISCELLANEOUS

23 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
24 person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: 9/29/08 John Steven Holmberg
Attorneys for Plaintiff

DATED: 9/30/08 [Signature]
Attorneys for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 6/22/09 Patricia V. Trumbull
Hon. ~~Jeremy Fogel~~ Patricia V. Trumbull
United States ~~District~~ Judge
Magistrate

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I have
read in its entirety and understand the Stipulated Protective Order that was issued by the
United States District Court for the Northern District of California on [date] in the case of
_____ **[insert formal name of the case and the number and initials assigned to it by
the court]**. I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could expose me
to sanctions and punishment in the nature of contempt. I solemnly promise that I will not
disclose in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Northern District of California for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.
I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone
number] as my California agent for service of process in connection with this action or any
proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]